राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 16 मई, 2023 / 26 वैशाख 1945

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 17th April, 2023

No. Shram (A) 3-2/2023 (Awards) L.C. Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Judge, Labour Court, Shimla on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* "e-Gazette" :—

Sl. No	Case No	Petitioner	Respondent	Date of Award/Order
1.	App. 67/2019	Ms. Prabha Devi	M/s Mahadev Pharmaceuticals Ltd.	01-12-2022
2.	App. 68/2019	Ms. Sita Devi	M/s Mahadev Pharmaceuticals Ltd.	01-12-2022
3.	App. 69/2019	Sh. Hardeep Chand	M/s Mahadev Pharmaceuticals Ltd.	01-12-2022
4.	App. 70/2019	Smt. Lalmuni	M/s Mahadev Pharmaceuticals Ltd.	01-12-2022
5.	App. 71/2019	Sh. Vicky Kumar	M/s Mahadev Pharmaceuticals Ltd.	01-12-2022
6.	App. 72/2019	Sh. Khushi Ram	M/s Mahadev Pharmaceuticals Ltd.	01-12-2022
7.	App. 73/2019	Smt. Himti Devi	M/s Mahadev Pharmaceuticals Ltd.	01-12-2022
8.	App. 74/2019	Smt. Babli Devi	M/s Mahadev Pharmaceuticals Ltd.	01-12-2022
9.	App. 75/2019	Sh. Baldev Singh	M/s Mahadev Pharmaceuticals Ltd.	01-12-2022
10.	App. 137/2019	Sh. Pyare Lal	M/s Mahadev Pharmaceuticals Ltd.	01-12-2022
11.	App. 138/2019	Smt. Krishna Devi	M/s Mahadev Pharmaceuticals Ltd.	01-12-2022
12.	App. 139/2019	Smt. Niyamvati	M/s Mahadev Pharmaceuticals Ltd.	01-12-2022

By order,

AKSHAY SOOD,
Secretary (Lab. & Emp.).

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number : 67 of 2019

Instituted on : 30-07-2019

Decided on : 01-12-2022

Prabha Devi w/o Shri Hardeep Chand, c/o Sheel Cottage, Ward No. 12, V.P.O. Taksal, Tehsil Kasauli, District Solan, H.P. Through Shri J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Solan . .*Petitioner.*

VERSUS

M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager/Occupier . .*Respondent.*

Statement of claim under the Industrial Disputes Act

For the Petitioner : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Rahul Mahajan, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as The Act**) preferred on behalf of Ms. Prabha Devi (**hereinafter to be referred as The Petitioner**) against the Factory Manager, M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, District Solan, H.P. (**hereinafter to be referred as The Respondent company**).

2. Material facts necessary for the disposal of the present petition, as alleged, by the petitioner in the statement of claim are thus that the petitioner was engaged as helper by the respondent company during the month of June 2013 and remained continued as such till her illegal removal from services on 07.12.2017. The petitioner was illegally restrained from attending her duties without any speaking orders and that too without any cogent reasons and justification. The petitioner despite various requests had not been allowed to enter the factory premises after 07.12.2017. It is further asserted that the services of the petitioner were terminated during the pendency of demand notice under section 2-K of the Act. The petitioner had worked for more than two years with neat and clean records and had completed 240 working days in every calendar year during the tenure of her services. The services of the petitioner have been terminated without any notice, retrenchment compensation and that too in voilation of provisions of section 25-F of the Act. The junior workmen in the same establishment were retained by the respondent while the services of petitioner have been terminated, which is voilative of sections 25-G and 25-H of the Act. It is also asserted that the action of the respondent to remove the petitioner from service is biased, unfair and unreasonable and followed the policy of hire and fire, which cannot be sustained on relevant law and facts in any event**.** The sudden removal of the petitioner from the employment has made his integrity doubtful in the eyes of one and all and as such the petitioner is un-employed since the date of her illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e from the date of her illegal removal/termination on 07.12.2017 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, the petitioner has concealed true and material facts and has not approached the Court with clean hands, eleven workers have resigned and taken full & final settlement and the petitioner was indulged in illegal and unjustified strike against the provisions of the Act and Model Standing Orders.

5. On merits, it is denied that the services of the petitioner have been terminated on 7.12.2017. It is submitted that the petitioner along-with other co-workers in a concerted manner engineered and did an illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is denied that the services of the petitioner were terminated during the pendency of the demand notice. The petitioner had failed to resume her duties even after advised by the Labour-*cum*-Conciliation Officer, Solan. Since, the services of the petitioner were never terminated by the respondent, hence there is no question of

conducting any domestic enquiry arises. It is further submitted that there is no violation of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 17.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent since 07.12.2017 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .*OPR.*

5. Whether this Court has no jurisdiction to entertain the present case as alleged? . .*OPR.*

6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	:	Yes
Issue No. 2	:	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Relief.	:	Claim petition partly allowed as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she reiterated almost all the averments as made in the claim petition. She also tendered into evidence letter dated 10.4.2019 (PW-1/B), demand notice dated 10.10.2017 Mark PA, letter dated 18.11.2017 Mark PB and demand notice dated 11.12.2017 Mark PC on record.

13. In cross-examination, she admitted that she was asked by the Labour Inspector to file the case before the Court *vide* letter dated 10.4.2019. She denied that she worked with the respondent from 09.09.2017. Volunteered that she worked with the respondent since March, 2011. She denied that she carried out strike in the premises of the respondent company since 14.10.2017 and they staged "Dharna" in the office of Labour Officer, Parwanoo. She further denied that she was asked by the Labour Inspector to join back her duties. She denied to have left the job at her own. She also denied that the respondent company was paying minimum wages to her. She denied that they raised slogans outside the gate of the company and did not allow the management and working staff to enter the premises. She denied that the company has not retained any junior person to her. She also denied that she is gainfully employed.

14. In order to rebut, the respondent has examined Shri Dev Raj, Security Guard of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has deposed that the workers/petitioner went on strike on 14.10.2017 and did not work and the workers failed to perform their duties inspite of respondent asking them to come and work. He further deposed that the respondent did not terminates the services of the worker/petitioner.

15. In cross-examination, he denied that he closed the factory gate on 14.10.2017 and did not allow the workers to enter inside the factory. He expressed his ignorance that the services of the workers of terminated or not terminated.

16. Shri Subhash Jindal, Partner of respondent company appeared into the witness dock as (RW-2), who tendered in evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the news item Mark RX.

17. In cross-examination, he denied that the services of the petitioner were terminated by the respondent company. He further denied that the petitioner raised the demand notice before the management. He also denied that the persons junior to the petitioner were engaged and retained in the service. He denied that no notice was served upon the petitioners to resume the duty. He admitted that no chargesheet and enquiries were conducted against the petitioner.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri J.C Bhardwaj, AR for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the peittioner were termianted by an oral order without complying with the provisions of the Act. He further contended that the workers of the respondent company have raised industrial dispute under section 2-K of the Act despite that the services of the petitioner were terminated without any reason. So far as concerning the plea of abandonment which has to be proved on record, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Rahul Mahajan, Ld. Counsel for the respondent urged that services of the petitioner were never terminated by the respodnent company and despite having asked to resume her duties she failed to resume her duties. He further contended that the petitioner along-with other co-workers have indulged in grave misconduct by participating in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. Since, the petitioner failed to resume her duties, hence there was no necessity to conduct any enquiry against her as she herself has abandoned her job. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the case record, it is manifestly clear on record that the petitioner had worked as helper with the respondent company since June 2013 and she worked as such till 07.12.2017. The one grouse raised from the side of the respondent company is that the petitioner along-with other co-workers has indulged in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is further the case of the respondent that the services of the petitioner were never terminated by the respondent company but in fact she herself had abandoned the job. On the other hand it is the case of the petitioner that the respondent company closed the gate of the factory and did not allow her to resume her duties. It is an admitted case of both the parties that neither any notice nor any domestic enquiry has been conducted against the petitioner before her alleged termination/abandonment.

23. There is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume her duties. From the record, it is also quite clear that before terminating the services of the petitioner neither she had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned her job but there is no such material which could go to show that any notice had been issued to her for resuming her duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub*** *that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."* *It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman. The Hon'ble Apex Court has held as under:*

> "**The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the**

respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

24. Thus, Having regard to the law laid down by the Hon'ble Apex Court (*supra*) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

25. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

26. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

27. From the perusal of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but she was not allowed to join her duties. Hence, the case of the petitioner clearly falls under the definition of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the

employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

31. Therefore, keeping in view my aforesaid discussion and also keeping in view the clear cut admission on the part of the owner of the respondent company namely Shri Subhash Chand, who, *vide* his separate statement stated at the bar that he is ready and willing to reinstate the services of the petitioner but without back-wages. The admission on the part of the respondent is out of his free will and volition. Such admission was not extracted from the respondent by applying any kind of extraneous factors such as fraud, coercion, mis-representation or any type of pressure. An admission is always treated as the best evidence available on record. Hence, the petitioner is held entitled for reinstatement with seniority and continuity.

32. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termination, the petitioner was not gainfully employed. The petitioner has failed to discharge her burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculier facts and

circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respondent company.

Issue No. 3

33. In support of this issue no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable before this Court especially when the same has been filed by the petitioner well within before the expiry of three years from the date of her termination. I find nothing wrong with this petition which is perfectably maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issues No. 4 & 5

34. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

35. In support of these issues no evidence has been led by the respondent, which could go to show that this Court has no jurisdiction and the petitioner has not approached the Court with clean hands. Therefore, both theses issues are decided against the respondent.

Relief

36. As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity**.** However, the petitioner is **not entitled to any back-wages**. The application/petition is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of December, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number	:	68 of 2019
Instituted on	:	30-07-2019
Decided on	:	01-12-2022

Sita Devi w/o Shri Lekh Ram, c/o Sheel Cottage, Ward No. 12, V.P.O. Taksal, Tehsil Kasauli, District Solan, H.P. through Shri J.C Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Solan . .*Petitioner.*

Versus

M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager/Occupier . .*Respondent.*

Statement of claim under the Industrial Disputes Act

For the Petitioner	:	Shri J.C. Bhardwaj, AR
For the Respondent	:	Shri Rahul Mahajan, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as The Act**) preferred on behalf of Ms. Sita Devi (**hereinafter to be referred as The Petitioner**) against the Factory Manager, M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, District Solan, H.P. (**hereinafter to be referred as The Respondent company**).

2. Material facts necessary for the disposal of the present petition, as alleged, by the petitioner in the statement of claim are thus that the petitioner was engaged as helper by the respondent company during the month of June 2015 and remained continued as such till her illegal removal from services on 07.12.2017. The petitioner was illegally restrained from attending her duties without any speaking orders and that too without any cogent reasons and justification. The petitioner despite various requests had not been allowed to enter the factory premises after 07.12.2017. It is further asserted that the services of the petitioner were terminated during the pendency of demand notice under section 2-K of the Act. The petitioner had worked for more than two years with neat and clean records and had completed 240 working days in every calendar year during the tenure of her services. The services of the petitioner have been terminated without any notice, retrenchment compensation and that too in violation of provisions of section 25-F of the Act. The junior workmen in the same establishment were retained by the respondent while the services of petitioner have been terminated, which is violative of sections 25-G and 25-H of the Act. It is also asserted that the action of the respondent to remove the petitioner from service is biased, unfair and unreasonable and followed the policy of hire and fire, which cannot be sustained on relevant law and facts in any event**.** The sudden removal of the petitioner from the employment has made his integrity doubtful in the eyes of one and all and as such the petitioner is un-employed since the date of her illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e from the date of her illegal removal/termination on 07.12.2017 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, the petitioner has concealed true and material facts and

has not approached the Court with clean hands, eleven workers have resigned and taken full & final settlement and the petitioner was indulged in illegal and unjustified strike against the provisions of the Act and Model Standing Orders.

5. On merits, it is denied that the services of the petitioner have been terminated on 7.12.2017. It is submitted that the petitioner along-with other co-workers in a concerted manner engineered and did an illegal and unjustified strike w.e.f. 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is denied that the services of the petitioner were terminated during the pendency of the demand notice. The petitioner had failed to resume her duties even after advised by the Labour-*cum*-Conciliation Officer, Solan. Since, the services of the petitioner were never terminated by the respondent, hence there is no question of conducting any domestic enquiry arises. It is further submitted that there is no violation of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 17.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent since 07.12.2017 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .*OPR.*

5. Whether this Court has no jurisdiction to entertain the present case as alleged? . .*OPR.*

6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	:	Yes
Issue No. 2	:	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No. 3	:	No

Issue No. 4	:	No
Issue No. 5	:	No
Relief	:	Claim petition partly allowed as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she reiterated almost all the averments as made in the claim petition. She also tendered into evidence application dated 10.10.2017 Mark PX-1 and 18.11.2017 Mark PX-2 on record.

13. In cross-examination, she admitted that at the time of filing the claim petition the demand notice was pending before the Labour Office. She denied that she was appointed in the year 2017. Volunteered that she worked with the respondent since June 2015. She denied that she carried out strike in the premises of the respondent company since 14.10.2017 and they staged "Dharna" in the office of Labour Officer, Parwanoo. She further denied that she was asked by the Labour Inspector to join back her duties. She denied to have left the job at her own. She also denied that the respondent company was paying minimum wages to her. She denied that they raised slogans outside the gate of the company and did not allow the management and working staff to enter the premises. She denied that the company has not retained any junior person to her. She also denied that she is gainfully employed.

14. In order to rebut, the respondent has examined Shri Dev Raj, Security Guard of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has deposed that the workers/petitioner went on strike on 14.10.2017 and did not work and the workers failed to perform their duties inspite of respondent asking them to come and work. He further deposed that the respondent did not terminates the services of the worker/petitioner.

15. In cross-examination, he denied that he closed the factory gate on 14.10.2017 and did not allow the workers to enter inside the factory. He expressed his ignorance that the services of the workers of terminated or not terminated.

16. Shri Subhash Jindal, Partner of respondent company appeared into the witness dock as (RW-2), who tendered in evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the news item Mark RX.

17. In cross-examination, he denied that the services of the petitioner were terminated by the respondent company. He further denied that the petitioner raised the demand notice before the management. He also denied that the persons junior to the petitioner were engaged and retained in the service. He denied that no notice was served upon the petitioners to resume the duty. He admitted that no chargesheet and enquiries were conducted against the petitioner.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. He further contended that the workers of the respondent company have raised industrial dispute under section 2-K of the Act despite that the services of the petitioner were terminated without any reason. So far as concerning the plea of abandonment which has to be proved on record, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Rahul Mahajan, Ld. Counsel for the respondent urged that services of the petitioner were never terminated by the respondent company and despite having asked to resume her duties she failed to resume her duties. He further contended that the petitioner along-with other co-workers have indulged in grave misconduct by participating in illegal and unjustified strike *w.e.f. 14*.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. Since, the petitioner failed to resume her duties, hence there was no necessity to conduct any enquiry against her as she herself has abandoned her job. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the case record, it is manifestly clear on record that the petitioner had worked as helper with the respondent company since June 2015 and she worked as such till 07.12.2017. The one grouse raised from the side of the respondent company is that the petitioner along-with other co-workers has indulged in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is further the case of the respondent that the services of the peittioner were never terminated by the respondent company but in fact she herself had abandoned the job. On the other hand it is the case of the petitioner that the respondent company closed the gate of the factory and did not allow her to resume her duties. It is an admitted case of both the parties that neither any notice nor any domestic enquiry has been conducted against the petitioner before her alleged termination/abandonment.

23. There is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume her duties. From the record, it is also quite clear that before terminating the services of the petitioner neither she had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned her job but there is no such material which could go to show that any notice had been issued to her for resuming her duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub*** *that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls.*" *It was further held that : "The principles of natural justice were required to be followed by giving opportunity to the workman. The Hon'ble Apex Court has held as under:*

> "**The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that**

the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

24. Thus, Having regard to the law laid down by the Hon'ble Apex Court (*supra*) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

25. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

26. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

27. From the perusal of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but she was not allowed to join her duties. Hence, the case of the petitioner clearly falls under the definition of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter;-*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

31. Therefore, keeping in view my aforesaid discussion and also keeping in view the clear cut admission on the part of the owner of the respondent company namely Shri Subhash Chand, who, *vide* his separate statement stated at the bar that he is ready and willing to reinstate the services of the petitioner but without back-wages. The admission on the part of the respondent is

out of his free will and volition. Such admission was not extracted from the respondent by applying any kind of extraneous factors such as fraud, coercion, mis-representation or any type of pressure. An admission is always treated as the best evidence available on record. Hence, the petitioner is held entitled for reinstatement with seniority and continuity.

32. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termination, the petitioner was not gainfully employed. The petitioner has failed to discharge her burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculier facts and circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respondent company.

Issue No. 3

33. In support of this issue no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable before this Court especially when the same has been filed by the petitioner well within before the expiry of three years from the date of her termination. I find nothing wrong with this petition which is perfectably maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issues No. 4 & 5

34. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

35. In support of these issues no evidence has been led by the respondent, which could go to show that this Court has no jurisdiction and the petitioner has not approached the Court with clean hands. Therefore, both theses issues are decided against the respodnent.

Relief

36. a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity**.** However, the petitioner is **not entitled to any back-wages**. The application/petition is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of December, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number : 69 of 2019

Instituted on : 31-07-2019

Decided on : 01-12-2022

Hardeep Chand s/o Shri Bajir Chand c/o Sheel Cottage, Ward No. 12 VPO Taksal, Tehsil Kasauli, District Solan, H.P. through Shri J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Solan. . .*Petitioner.*

VERSUS

M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, HP through its Factory Manager/Occupier. . .*Respondent*.

Statement of claim under the Industrial Disputes Act

For the Petitioner : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Rahul Mahajan, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as The Act**) preferred on behalf of Shri Hardeep Chand (**hereinafter to be referred as The Petitioner**) against the Factory Manager, M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, District Solan, HP (**hereinafter to be referred as The Respondent company**).

2. Material facts necessary for the disposal of the present petition, as alleged, by the petitioner in the statement of claim are thus that the petitioner was engaged as an operator by the respondent company during the month of June 2016 and remained continued as such till his illegal removal from services on 07.12.2017. The petitioner was illegally restrained from attending his duties without any speaking orders and that too without any cogent reasons and justification. The petitioner despite various requests had not been allowed to enter the factory premises after 07.12.2017. It is further asserted that the services of the petitioner were terminated during the pendency of demand notice under section 2-K of the Act. The petitioner had worked for more than two years with neat and clean records and had completed 240 working days in every calendar year during the tenure of his services. The services of the petitioner have been terminated without any notice, retrenchment compensation and that too in violation of provisions of section 25-F of the Act. The junior workmen in the same establishment were retained by the respondent while the services of petitioner have been terminated, which is violative of sections 25-G and 25-H of the Act. It is also asserted that the action of the respondent to remove the petitioner from service is biased, unfair and unreasonable and followed the policy of hire and fire, which cannot be sustained on relevant law and facts in any event**.** The sudden removal of the petitioner from the employment has made his integrity doubtful in the eyes of one and all and as such the petitioner is un-employed since the date of his illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e from the date of her illegal removal/termination on 07.12.2017 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, the petitioner has concealed true and material facts and has not approached the Court with clean hands, eleven workers have resigned and taken full & final settlement and the petitioner was indulged in illegal and unjustified strike against the provisions of the Act and Model Standing Orders..

5. On merits, it is denied that the services of the petitioner have been terminated on 7.12.2017. It is submitted that the petitioner along-with other co-workers in a concerted manner engineered and did an illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is denied that the services of the petitioner were terminated during the pendency of the demand notice. The petitioner had failed to resume his duties even after advised by the Labour-cum-Conciliation Officer, Solan. Since, the services of the petitioner were never terminated by the respondent, hence there is no question of conducting any domestic enquiry arises. It is further submitted that there is no violation of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 17.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent since 07.12.2017 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .*OPR.*

5. Whether this Court has no jurisdiction to entertain the present case as alleged? . .*OPR.*

6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No.3	No
Issue No.4	No
Issue No.5	No
Relief	Claim petition partly allowed as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence applications dated 10.10.2017 Mark PX-1 and 18.11.2017 Mark PX-2 on record.

13. In cross-examination, he admitted that at the time of filing the claim petition the demand notice was pending in the Labour Office. He denied that he carried out strike in the premises of the respondent company since 14.10.2017 and they staged "Dharna" in the office of Labour Officer, Parwanoo. He further denied that he was asked by the Labour Inspector to join back his duties. He denied to have left the job at his own. He also denied that the respondent company was paying minimum wages to him. He denied that they raised slogans outside the gate of the company and did not allow the management and working staff to enter the premises. He denied that the company has not retained any junior person to him. He also denied that he is gainfully employed.

14. In order to rebut, the respondent has examined Shri Dev Raj, Security Guard of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has deposed that the workers/petitioner went on strike on 14.10.2017 and did not work and the workers failed to perform their duties inspite of respondent asking them to come and work. He further deposed that the respondent did not terminates the services of the worker/petitioner.

15. In cross-examination, he denied that he closed the factory gate on 14.10.2017 and did not allow the workers to enter inside the factory. He expressed his ignorance that the services of the workers of terminated or not terminated.

16. Shri Subhash Jindal, Partner of respondent company appeared into the witness dock as (RW-2), who tendered in evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the news item Mark RX.

17. In cross-examination, he denied that the services of the petitioner were terminated by the respondent company. He further denied that the petitioner raised the demand notice before the management. He also denied that the persons junior to the petitioner were engaged and retained in the service. He denied that no notice was served upon the petitioners to resume the duty. He admitted that no chargesheet and enquiries were conducted against the petitioner.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. He further contended that the workers of the respondent company have raised industrial dispute under section 2-K of the Act despite that the services of the petitioner were terminated without any reason. So far as concerning the plea of abandonment which has to be proved on record, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Rahul Mahajan, Ld. Counsel for the respondent urged that services of the petitioner were never terminated by the respondent company and despite having asked to resume his duties he failed to resume his duties. He further contended that the petitioner along-with other co-workers have indulged in grave misconduct by participating in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. Since, the petitioner failed to resume his duties, hence there was no necessity to conduct any enquiry against him as he himself has abandoned his job. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the case record, it is manifestly clear on record that the petitioner had worked as an operator with the respondent company since June 2016 and he worked as such till 07.12.2017. The one grouse raised from the side of the respondent company is that the petitioner along-with other co-workers has indulged in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is further the case of the respodnent that the services of the petitioner were never terminated by the respondent company but in fact she herself had abandoned the job. On the other hand it is the case of the petitioner that the respondent company closed the gate of the factory and did not allow him to resume his duties. It is an admitted case of both the parties that neither any notice nor any domestic enquiry has been conducted against the petitioner before his alleged termination/abandonment.

23. There is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned her job but there is no such material which could go to show that any

notice had been issued to him for resuming his duties. *It has been held by the* ***Hon'ble Apex Court*** **in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub** that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls." It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman. The Hon'ble Apex Court has held as under:

> "**The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."**

24. Thus, Having regard to the law laid down by the Hon'ble Apex Court (*supra*) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that he had not abandoned the job at his own.

25. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

26. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

27. From the perusal of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the definition of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisions of section 25-F of the Act. Therefore, in view of the aforesaid

discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,—***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

31. Therefore, keeping in view my aforesaid discussion and also keeping in view the clear cut admission on the part of the owner of the respondent company namely Shri Subhash Chand, who, *vide* his separate statement stated at the bar that he is ready and willing to reinstate the services of the petitioner but without back-wages. The admission on the part of the respondent is out of his free will and volition. Such admission was not extracted from the respondent by applying any kind of extraneous factors such as fraud, coercion, mis-representation or any type of pressure. An admission is always treated as the best evidence available on record. Hence, the petitioner is held entitled for reinstatement with seniority and continuity.

32. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termination, the petitioner was not gainfully employed. The petitioner has failed to discharge his burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculier facts and circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respondent company.

ISSUE NO.3

33. In support of this issue no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable before this Court especially when the same has been filed by the petitioner well within before the expiry of three years from the date of his termination. I find nothing wrong with this petition which is perfectably maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 4 & 5

34. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

35. In support of these issues no evidence has been led by the respondent, which could go to show that this Court has no jurisdiction and the petitioner has not approached the Court with clean hands. Therefore, both theses issues are decided against the respodnent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity**.** However, the petitioner is **not entitled to any back-wages**. The application/petition is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of December, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number : 70 of 2019

Instituted on : 30-07-2019

Decided on : 01-12-2022

Lalmuni w/o Shri Pyare Lal, c/o Sheel Cottage, Ward No. 12 VPO Taksal, Tehsil Kasauli, District Solan, H.P. through Shri J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Solan. . .*Petitioner.*

VERSUS

M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager/Occupier . .*Respondent.*

Statement of claim under the Industrial Disputes Act

For the Petitioner : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Rahul Mahajan, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as The Act) preferred on behalf of Ms. Lalmuni (hereinafter to be referred as The Petitioner) against the Factory Manager, M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, District Solan, HP (hereinafter to be referred as The Respondent company).

2. Material facts necessary for the disposal of the present petition, as alleged, by the petitioner in the statement of claim are thus that the petitioner was engaged as helper by the respondent company during the month of July 2014 and remained continued as such till her illegal removal from services on 07.12.2017. The petitioner was illegally restrained from attending her duties without any speaking orders and that too without any cogent reasons and justification. The petitioner despite various requests had not been allowed to enter the factory premises after 07.12.2017. It is further asserted that the services of the petitioner were terminated during the pendency of demand notice under section 2-K of the Act. The petitioner had worked for more than two years with neat and clean records and had completed 240 working days in every calendar year during the tenure of her services. The services of the petitioner have been terminated without any

notice, retrenchment compensation and that too in violation of provisions of section 25-F of the Act. The junior workmen in the same establishment were retained by the respondent while the services of petitioner have been terminated, which is violative of sections 25-G and 25-H of the Act. It is also asserted that the action of the respondent to remove the petitioner from service is biased, unfair and unreasonable and followed the policy of hire and fire, which cannot be sustained on relevant law and facts in any event**.** The sudden removal of the petitioner from the employment has made his integrity doubtful in the eyes of one and all and as such the petitioner is un-employed since the date of her illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e from the date of her illegal removal/termination on 07.12.2017 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, the petitioner has concealed true and material facts and has not approached the Court with clean hands, eleven workers have resigned and taken full & final settlement and the petitioner was indulged in illegal and unjustified strike against the provisions of the Act and Model Standing Orders..

5. On merits, it is denied that the services of the petitioner have been terminated on 7.12.2017. It is submitted that the petitioner along-with other co-workers in a concerted manner engineered and did an illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is denied that the services of the petitioner were terminated during the pendency of the demand notice. The petitioner had failed to resume her duties even after advised by the Labour-*cum*-Conciliation Officer, Solan. Since, the services of the petitioner were never terminated by the respondent, hence there is no question of conducting any domestic enquiry arises. It is further submitted that there is no violation of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent since 07.12.2017 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . *OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .*OPR.*

5. Whether this Court has no jurisdiction to entertain the present case as alleged? . .*OPR.*

6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No.3	No
Issue No.4	No
Issue No.5	No
Relief.	Claim petition partly allowed as per operative part of award

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she reiterated almost all the averments as made in the claim petition. She also tendered into evidence letter dated 10.4.2019 (PW-1/B), demand notice dated 10.10.2017 Mark PA, letter dated 18.11.2017 Mark PB and demand notice dated 11.12.2017 Mark PC on record.

13. In cross-examination, she admitted that she was asked by the Labour Inspector to file the case before the Court *vide* letter dated 10.4.2019. She denied that she worked with the respondent from August 2017. She denied that she carried out strike in the premises of the respondent company since 14.10.2017 and they staged "Dharna" in the office of Labour Officer, Parwanoo. She further denied that she was asked by the Labour Inspector to join back her duties. She denied to have left the job at her own. She also denied that the respondent company was paying minimum wages to her. She denied that they raised slogans outside the gate of the company and did not allow the management and working staff to enter the premises. She denied that the company has not retained any junior person to her. She also denied that she is gainfully employed.

14. In order to rebut, the respondent has examined Shri Dev Raj, Security Guard of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has deposed that the workers/petitioner went on strike on 14.10.2017 and did not work and the workers failed to perform their duties inspite of respondent asking them to come and work. He further deposed that the respondent did not terminates the services of the worker/petitioner.

15. In cross-examination, he denied that he closed the factory gate on 14.10.2017 and did not allow the workers to enter inside the factory. He expressed his ignorance that the services of the workers of terminated or not terminated.

16. Shri Subhash Jindal, Partner of respondent company appeared into the witness dock as (RW-2), who tendered in evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the news item Mark RX.

17. In cross-examination, he denied that the services of the petitioner were terminated by the respondent company. He further denied that the petitioner raised the demand notice before the management. He also denied that the persons junior to the petitioner were engaged and retained in the service. He denied that no notice was served upon the petitioners to resume the duty. He admitted that no chargesheet and enquiries were conducted against the petitioner.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. He further contended that the workers of the respondent company have raised industrial dispute under section 2-K of the Act despite that the services of the petitioner were terminated without any reason. So far as concerning the plea of abandonment which has to be proved on record, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Rahul Mahajan, Ld. Counsel for the respondent urged that services of the petitioner were never terminated by the respondent company and despite having asked to resume her duties she failed to resume her duties. He further contended that the petitioner along-with other co-workers have indulged in grave misconduct by participating in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. Since, the petitioner failed to resume her duties, hence there was no necessity to conduct any enquiry agaisnt her as she herself has abandoned her job. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the case record, it is manifestly clear on record that the petitioner had worked as helper with the respondent company since July 2014 and she worked as such till 07.12.2017. The one grouse raised from the side of the respondent company is that the petitioner along-with other co-workers has indulged in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the

factory. The petitioiner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is further the case of the respondent that the services of the petitioner were never termainted by the respodnent company but in fact she herself had abandoned the job. On the other hand it is the case of the petitioner that the respondent company closed the gate of the factory and did not allow her to resume her duties. It is an admitted case of both the parties that neither any notice nor any domestic enquiry has been conducted against the petitioner before her alleged termination/abandonment.

23. There is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume her duties. From the record, it is also quite clear that before terminating the services of the petitioner neither she had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned her job but there is no such material which could go to show that any notice had been issued to her for resuming her duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub*** *that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."* *It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman. The Hon'ble Apex Court has held as under:*

> *"**The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."***

24. Thus, Having regard to the law laid down by the Hon'ble Apex Court *(supra*) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

25. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

26. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

27. From the perusal of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but she was not allowed to join her duties. Hence, the case of the petitioner clearly falls under the definition of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,-*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

31. Therefore, keeping in view my aforesaid discussion and also keeping in view the clear cut admission on the part of the owner of the respondent company namely Shri Subhash Chand, who, *vide* his separate statement stated at the bar that he is ready and willing to reinstate the services of the petitioner but without back-wages. The admission on the part of the respondent is out of his free will and volition. Such admission was not extracted from the respondent by applying any kind of extraneous factors such as fraud, coercion, mis-representation or any type of pressure. An admission is always treated as the best evidence available on record. Hence, the petitioner is held entitled for reinstatement with seniority and continuity.

32. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termination, the petitioner was not gainfully employed. The petitioner has failed to discharge her burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculier facts and circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respondent company.

ISSUE NO. 3

33. In support of this issue no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable before this Court especially when the same has been filed by the petitioner well within before the expiry of three years from the date of her termination. I find nothing wrong with this petition which is perfectably maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 4 & 5

34. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

35. In support of these issues no evidence has been led by the respondent, which could go to show that this Court has no jurisdiction and the petitioner has not approached the Court with clean hands. Therefore, both theses issues are decided against the respondent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity**.** However, the petitioner is **not entitled to any back-wages**. The application/petition is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of December, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number : 71 of 2019

Instituted on : 03-08-2019

Decided on : 01-12-2022

Vicky Kumar s/o Shri Mahi Ram, c/o Sheel Cottage, Ward No. 12 VPO Taksal, Tehsil Kasauli, District Solan, H.P. through Shri J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Solan . .*Petitioner.*

VERSUS

M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager/Occupier. . .*Respondent.*

Statement of claim under the Industrial Disputes Act

For the Petitioner : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Rahul Mahajan, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as The Act**) preferred on behalf of Shri Vicky Kumar (**hereinafter to be referred as The Petitioner**) against the Factory Manager, M/s Mahadev

Pharmaceutical, Kasauli Road Parwanoo, District Solan, H.P. (**hereinafter to be referred as The Respondent company**).

2. Material facts necessary for the disposal of the present petition, as alleged, by the petitioner in the statement of claim are thus that the petitioner was engaged as an operator by the respondent company during the month of Feb., 2013 and remained continued as such till his illegal removal from services on 07.12.2017. The petitioner was illegally restrained from attending his duties without any speaking orders and that too without any cogent reasons and justification. The petitioner despite various requests had not been allowed to enter the factory premises after 07.12.2017. It is further asserted that the services of the petitioner were terminated during the pendency of demand notice under section 2-K of the Act. The petitioner had worked for more than two years with neat and clean records and had completed 240 working days in every calendar year during the tenure of his services. The services of the petitioner have been terminated without any notice, retrenchment compensation and that too in violation of provisions of section 25-F of the Act. The junior workmen in the same establishment were retained by the respondent while the services of petitioner have been terminated, which is violative of sections 25-G and 25-H of the Act. It is also asserted that the action of the respondent to remove the petitioner from service is biased, unfair and unreasonable and followed the policy of hire and fire, which cannot be sustained on relevant law and facts in any event**.** The sudden removal of the petitioner from the employment has made his integrity doubtful in the eyes of one and all and as such the petitioner is un-employed since the date of his illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e from the date of her illegal removal/termination on 07.12.2017 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, the petitioner has concealed true and material facts and has not approached the Court with clean hands, eleven workers have resigned and taken full & final settlement and the petitioner was indulged in illegal and unjustified strike against the provisions of the Act and Model Standing Orders..

5. On merits, it is denied that the services of the petitioner have been terminated on 7.12.2017. It is submitted that the petitioner along-with other co-workers in a concerted manner engineered and did an illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is denied that the services of the petitioner were terminated during the pendency of the demand notice. The petitioner had failed to resume his duties even after advised by the Labour-*cum*-Conciliation Officer, Solan. Since, the services of the petitioner were never terminated by the respondent, hence there is no question of conducting any domestic enquiry arises. It is further submitted that there is no violation of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 17.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent since 07.12.2017 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .*OPR.*

5. Whether this Court has no jurisdiction to entertain the present case as alleged? . .*OPR.*

6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No.3	No
Issue No.4	No
Issue No.5	No
Relief	Claim petition partly allowed as per operative part of award

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. She also tendered into evidence letter dated

10.4.2019 (PW-1/B), demand notice dated 10.10.2017 Mark PA, letter dated 18.11.2017 Mark PB and demand notice dated 11.12.2017 Mark PC on record.

13. In cross-examination, he admitted that he was asked by the Labour Inspector to file the case before the Court *vide* letter dated 10.4.2019. He denied that he worked with the respondent from July 2014. He denied that he carried out strike in the premises of the respondent company since 14.10.2017 and they staged "Dharna" in the office of Labour Officer, Parwanoo. He further denied that he was asked by the Labour Inspector to join back his duties. He denied to have left the job at his own. He also denied that the respondent company was paying minimum wages to him. He denied that they raised slogans outside the gate of the company and did not allow the management and working staff to enter the premises. He denied that the company has not retained any junior person to him. He also denied that he is gainfully employed.

14. In order to rebut, the respondent has examined Shri Dev Raj, Security Guard of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has deposed that the workers/petitioner went on strike on 14.10.2017 and did not work and the workers failed to perform their duties inspite of respondent asking them to come and work. He further deposed that the respondent did not terminates the services of the worker/petitioner.

15. In cross-examination, he denied that he closed the factory gate on 14.10.2017 and did not allow the workers to enter inside the factory. He expressed his ignorance that the services of the workers of terminated or not terminated.

16. Shri Subhash Jindal, Partner of respondent company appeared into the witness dock as (RW-2), who tendered in evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the news item Mark RX.

17. In cross-examination, he denied that the services of the petitioner were terminated by the respondent company. He further denied that the petitioner raised the demand notice before the management. He also denied that the persons junior to the petitioner were engaged and retained in the service. He denied that no notice was served upon the petitioners to resume the duty. He admitted that no chargesheet and enquiries were conducted against the petitioner.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. He further contended that the workers of the respondent company have raised industrial dispute under section 2-K of the Act despite that the services of the petitioner were terminated without any reason. So far as concerning the plea of abandonment which has to be proved on record, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Rahul Mahajan, Ld. Counsel for the respondent urged that services of the petitioner were never terminated by the respondent company and despite having asked to resume his duties he failed to resume his duties. He further contended that the petitioner along-with other co-workers have indulged in grave misconduct by participating in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform

their duties. Since, the petitioner failed to resume his duties, hence there was no necessity to conduct any enquiry against him as he himself has abandoned his job. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the case record, it is manifestly clear on record that the petitioner had worked as an operator with the respondent company since Feb., 2013 and he worked as such till 07.12.2017. The one grouse raised from the side of the respondent company is that the petitioner along-with other co-workers has indulged in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is further the case of the respodnent that the services of the petitioner were never terminated by the respondent company but in fact she herself had abandoned the job. On the other hand it is the case of the petitioner that the respondent company closed the gate of the factory and did not allow him to resume his duties. It is an admitted case of both the parties that neither any notice nor any domestic enquiry has been conducted against the petitioner before his alleged termination/abandonment.

23. There is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned her job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub*** *that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."* *It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman. The Hon'ble Apex Court has held as under:*

> *"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was*

retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

24. Thus, Having regard to the law laid down by the Hon'ble Apex Court (*supra*) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that he had not abandoned the job at his own.

25. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

26. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

27. From the perusal of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the definition of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,—***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

31. Therefore, keeping in view my aforesaid discussion and also keeping in view the clear cut admission on the part of the owner of the respondent company namely Shri Subhash Chand, who, *vide* his separate statement stated at the bar that he is ready and willing to reinstate the services of the petitioner but without back-wages. The admission on the part of the respondent is out of his free will and volition. Such admission was not extracted from the respondent by applying any kind of extraneous factors such as fraud, coercion, mis-representation or any type of pressure. An admission is always treated as the best evidence available on record. Hence, the petitioner is held entitled for reinstatement with seniority and continuity.

32. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termination, the petitioner was not gainfully employed. The petitioner has failed to discharge his burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculier facts and circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respondent company.

ISSUE NO. 3

33. In support of this issue no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable before this Court especially when the same

has been filed by the petitioner well within before the expiry of three years from the date of his termination. I find nothing wrong with this petition which is perfectably maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 4 & 5

34. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

35. In support of these issues no evidence has been led by the respondent, which could go to show that this Court has no jurisdiction and the petitioner has not approached the Court with clean hands. Therefore, both theses issues are decided against the respodnent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity**.** However, the petitioner is **not entitled to any back-wages**. The application/petition is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of December, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number : 72 of 2019

Instituted on : 03-08-2019

Decided on : 01-12-2022

Khushi Ram s/o Shri Ram Kishan, c/o Sheel Cottage, Ward No. 12, VPO Taksal, Tehsil Kasauli, District Solan, H.P. through Shri J. C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Solan. . .*Petitioner.*

VERSUS

M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager/Occupier . .*Respondent*.

Statement of claim under the Industrial Disputes Act

For the Petitioner : Shri J. C. Bhardwaj, AR

For the Respondent : Shri Rahul Mahajan, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as The Act**) preferred on behalf of Shri Khushi Ram (**hereinafter to be referred as The Petitioner**) against the Factory Manager, M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, District Solan, HP (**hereinafter to be referred as The Respondent company**).

2. Material facts necessary for the disposal of the present petition, as alleged, by the petitioner in the statement of claim are thus that the petitioner was engaged as helper by the respondent company during the month of April 2014 and remained continued as such till his illegal removal from services on 07.12.2017. The petitioner was illegally restrained from attending his duties without any speaking orders and that too without any cogent reasons and justification. The petitioner despite various requests had not been allowed to enter the factory premises after 07.12.2017. It is further asserted that the services of the petitioner were terminated during the pendency of demand notice under section 2-K of the Act. The petitioner had worked for more than two years with neat and clean records and had completed 240 working days in every calendar year during the tenure of his services. The services of the petitioner have been terminated without any notice, retrenchment compensation and that too in violation of provisions of section 25-F of the Act. The junior workmen in the same establishment were retained by the respondent while the services of petitioner have been terminated, which is violative of sections 25-G and 25-H of the Act. It is also asserted that the action of the respondent to remove the petitioner from service is biased, unfair and unreasonable and followed the policy of hire and fire, which cannot be sustained on relevant law and facts in any event**.** The sudden removal of the petitioner from the employment has made his integrity doubtful in the eyes of one and all and as such the petitioner is un-employed since the date of his illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect i.e from the date of her illegal removal/termination on 07.12.2017 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, the petitioner has concealed true and material facts and has not approached the Court with clean hands, eleven workers have resigned and taken full & final settlement and the petitioner was indulged in illegal and unjustified strike against the provisions of the Act and Model Standing Orders.

5. On merits, it is denied that the services of the petitioner have been terminated on 7.12.2017. It is submitted that the petitioner along-with other co-workers in a concerted manner

engineered and did an illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is denied that the services of the petitioner were terminated during the pendency of the demand notice. The petitioner had failed to resume his duties even after advised by the Labour-*cum*-Conciliation Officer, Solan. Since, the services of the petitioner were never terminated by the respondent, hence there is no question of conducting any domestic enquiry arises. It is further submitted that there is no violation of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent since 07.12.2017 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .*OPR.*

5. Whether this Court has no jurisdiction to entertain the present case as alleged? . .*OPR.*

6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No.3	No
Issue No.4	No
Issue No.5	No
Relief.	Claim petition partly allowed as per operative part of award

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. She also tendered into evidence letter dated 10.4.2019 (PW-1/B), demand notice dated 10.10.2017 Mark PA, letter dated 18.11.2017 Mark PB and demand notice dated 11.12.2017 Mark PC on record.

13. In cross-examination, he admitted that he was asked by the Labour Inspector to file the case before the Court *vide* letter dated 10.4.2019. He denied that he worked with the respondent from 19.08.2016. He denied that he carried out strike in the premises of the respondent company since 14.10.2017 and they staged "Dharna" in the office of Labour Officer, Parwanoo. He further denied that he was asked by the Labour Inspector to join back his duties. He denied to have left the job at his own. He also denied that the respondent company was paying minimum wages to him. He denied that they raised slogans outside the gate of the company and did not allow the management and working staff to enter the premises. He denied that the company has not retained any junior person to him. He also denied that he is gainfully employed.

14. In order to rebut, the respondent has examined Shri Dev Raj, Security Guard of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has deposed that the workers/petitioner went on strike on 14.10.2017 and did not work and the workers failed to perform their duties inspite of respondent asking them to come and work. He further deposed that the respondent did not terminates the services of the worker/petitioner.

15. In cross-examination, he denied that he closed the factory gate on 14.10.2017 and did not allow the workers to enter inside the factory. He expressed his ignorance that the services of the workers of terminated or not terminated.

16. Shri Subhash Jindal, Partner of respondent company appeared into the witness dock as (RW-2), who tendered in evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the news item Mark RX.

17. In cross-examination, he denied that the services of the petitioner were terminated by the respondent company. He further denied that the petitioner raised the demand notice before the management. He also denied that the persons junior to the petitioner were engaged and retained in the service. He denied that no notice was served upon the petitioners to resume the duty. He admitted that no chargesheet and enquiries were conducted against the petitioner.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. He further contended that the workers of the respondent company have raised industrial dispute under section 2-K of the Act despite that the services of the petitioner were terminated without any reason. So far as concerning

the plea of abandonment which has to be proved on record, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Rahul Mahajan, Ld. Counsel for the respondent urged that services of the petitioner were never terminated by the respondent company and despite having asked to resume his duties he failed to resume his duties. He further contended that the petitioner along-with other co-workers have indulged in grave misconduct by participating in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. Since, the petitioner failed to resume his duties, hence there was no necessity to conduct any enquiry against him as he himself has abandoned his job. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the case record, it is manifestly clear on record that the petitioner had worked as helper with the respondent company since April 2014 and he worked as such till 07.12.2017. The one grouse raised from the side of the respondent company is that the petitioner along-with other co-workers has indulged in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is further the case of the respondent that the services of the petitioner were never termainted by the respondent company but in fact she herself had abandoned the job. On the other hand it is the case of the petitioner that the respondent company closed the gate of the factory and did not allow him to resume his duties. It is an admitted case of both the parties that neither any notice nor any domestic enquiry has been conducted against the petitioner before his alleged termination/abandonment.

23. There is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned her job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub*** *that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."* *It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman. The Hon'ble Apex Court has held as under:*

> "**The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given**

evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

24. Thus, Having regard to the law laid down by the Hon'ble Apex Court (*supra*) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that he had not abandoned the job at his own.

25. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

26. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

27. From the perusal of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the definition of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,-*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

31. Therefore, keeping in view my aforesaid discussion and also keeping in view the clear cut admission on the part of the owner of the respondent company namely Shri Subhash Chand, who, *vide* his separate statement stated at the bar that he is ready and willing to reinstate the services of the petitioner but without back-wages. The admission on the part of the respondent is out of his free will and volition. Such admission was not extracted from the respondent by applying any kind of extraneous factors such as fraud, coercion, mis-representation or any type of pressure. An admission is always treated as the best evidence available on record. Hence, the petitioner is held entitled for reinstatement with seniority and continuity.

32. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termination, the petitioner was not gainfully employed. The petitioner has failed to discharge his burden by leading cogent and

satisfactory evidence in this regard. Moreover, keeping in view the peculier facts and circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respondent company.

ISSUE NO. 3

33. In support of this issue no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable before this Court especially when the same has been filed by the petitoiner well within before the expiry of three years from the date of his termination. I find nothing wrong with this petition which is perfectably maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 4 & 5

34. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

35. In support of these issues no evidence has been led by the respondent, which could go to show that this Court has no jurisdiction and the petitioner has not approached the Court with clean hands. Therefore, both theses issues are decided against the respodnent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity**.** However, the petitioner is **not entitled to any back-wages**. The application/petition is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of December, 2022

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number	:	73 of 2019
Instituted on	:	03-08-2019
Decided on	:	01-12-2022

Himti Devi w/o Shri Raja Ram, c/o Sheel Cottage, Ward No. 12 VPO Taksal Tehsil Kasauli, District Solan, H.P. Through Shri J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Solan. . .*Petitioner.*

VERSUS

M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager/Occupier . .*Respondent.*

Statement of claim under the Industrial Disputes Act

For the Petitioner : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Rahul Mahajan, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as The Act**) preferred on behalf of Ms. Himti Devi (**hereinafter to be referred as The Petitioner**) against the Factory Manager, M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, District Solan, H.P. (**hereinafter to be referred as The Respondent company**).

2. Material facts necessary for the disposal of the present petition, as alleged, by the petitioner in the statement of claim are thus that the petitioner was engaged as helper by the respondent company during the month of June 2012 and remained continued as such till her illegal removal from services on 07.12.2017. The petitioner was illegally restrained from attending her duties without any speaking orders and that too without any cogent reasons and justification. The petitioner despite various requests had not been allowed to enter the factory premises after 07.12.2017. It is further asserted that the services of the petitioner were terminated during the pendency of demand notice under section 2-K of the Act. The petitioner had worked for more than two years with neat and clean records and had completed 240 working days in every calendar year during the tenure of her services. The services of the petitioner have been terminated without any notice, retrenchment compensation and that too in violation of provisions of section 25-F of the Act. The junior workmen in the same establishment were retained by the respondent while the services of petitioner have been terminated, which is voilative of sections 25-G and 25-H of the Act. It is also asserted that the action of the respondent to remove the petitioner from service is biased, unfair and unreasonable and followed the policy of hire and fire, which cannot be sustained on relevant law and facts in any event**.** The sudden removal of the petitioner from the employment has made his integrity doubtful in the eyes of one and all and as such the petitioner is un-employed since the date of her illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect** i.e. **from the date of her illegal removal/termination on 07.12.2017 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, the petitioner has concealed true and material facts and has not approached the Court with clean hands, eleven workers have resigned and taken full & final settlement and the petitioner was indulged in illegal and unjustified strike against the provisions of the Act and Model Standing Orders..

5. On merits, it is denied that the services of the petitioner have been terminated on 7.12.2017. It is submitted that the petitioner along-with other co-workers in a concerted manner engineered and did an illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is denied that the services of the petitioner were terminated during the pendency of the demand notice. The petitioner had failed to resume her duties even after advised by the Labour-*cum*-Conciliation Officer, Solan. Since, the services of the petitioner were never terminated by the respondent, hence there is no question of conducting any domestic enquiry arises. It is further submitted that there is no violation of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 17.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent since 07.12.2017 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .*OPR.*

5. Whether this Court has no jurisdiction to entertain the present case as alleged? . .*OPR.*

6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back-wages.

Issue No.3	No
Issue No.4	No
Issue No.5	No
Relief	Claim petition partly allowed as per operative part of award

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she reiterated almost all the averments as made in the claim petition. She also tendered into evidence letter dated 10.4.2019 (PW-1/B), demand notice dated 10.10.2017 Mark PA, letter dated 18.11.2017 Mark PB and demand notice dated 11.12.2017 Mark PC on record.

13. In cross-examination, she admitted that she was asked by the Labour Inspector to file the case before the Court *vide* letter dated 10.4.2019. She denied that she worked with the respondent from July 2014. Volunteered that she worked with the respondent since March, 2012. She denied that she carried out strike in the premises of the respondent company since 14.10.2017 and they staged "Dharna" in the office of Labour Officer, Parwanoo. She further denied that she was asked by the Labour Inspector to join back her duties. She denied to have left the job at her own. She also denied that the respondent company was paying minimum wages to her. She denied that they raised slogans outside the gate of the company and did not allow the management and working staff to enter the premises. She denied that the company has not retained any junior person to her. She also denied that she is gainfully employed.

14. In order to rebut, the respondent has examined Shri Dev Raj, Security Guard of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has deposed that the workers/petitioner went on strike on 14.10.2017 and did not work and the workers failed to perform their duties inspite of respondent asking them to come and work. He further deposed that the respondent did not terminates the services of the worker/petitioner.

15. In cross-examination, he denied that he closed the factory gate on 14.10.2017 and did not allow the workers to enter inside the factory. He expressed his ignorance that the services of the workers of terminated or not terminated.

16. Shri Subhash Jindal, Partner of respondent company appeared into the witness dock as (RW-2), who tendered in evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the news item Mark RX.

17. In cross-examination, he denied that the services of the petitioner were terminated by the respondent company. He further denied that the petitioner raised the demand notice before the management. He also denied that the persons junior to the petitioner were engaged and retained in the service. He denied that no notice was served upon the petitioners to resume the duty. He admitted that no chargesheet and enquiries were conducted against the petitioner.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. He further contended that the workers of the respondent company have raised industrial dispute under section 2-K of the Act despite that the services of the petitioner were terminated without any reason. So far as concerning the plea of abandonment which has to be proved on record, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Rahul Mahajan, Ld. Counsel for the respondent urged that services of the petitioner were never terminated by the respondent company and despite having asked to resume her duties she failed to resume her duties. He further contended that the petitioner along-with other co-workers have indulged in grave misconduct by participating in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. Since, the petitioner failed to resume her duties, hence there was no necessity to conduct any enquiry against her as she herself has abandoned her job. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the case record, it is manifestly clear on record that the petitioner had worked as helper with the respondent company since June 2012 and she worked as such till 07.12.2017. The one grouse raised from the side of the respondent company is that the petitioner along-with other co-workers has indulged in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is further the case of the respondent that the services of the petitioner were never terminated by the respondent company but in fact she herself had abandoned the job. On the other hand it is the case of the petitioner that the respondent company closed the gate of the factory and did not allow her to resume her duties. It is an admitted case of both the parties that neither any notice nor any domestic enquiry has been conducted against the petitioner before her alleged termination/abandonment.

23. There is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume her duties. From the record, it is also quite clear that before terminating the services of the petitioner neither she had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned her job but there is no such material which could go to show that any notice had been issued to her for resuming her duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub*** *that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."* *It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman. The Hon'ble Apex Court has held as under:*

"**The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."**

24. Thus, Having regard to the law laid down by the Hon'ble Apex Court (*supra*) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

25. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

26. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

27. From the perusal of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but she was not allowed to join her duties. Hence, the case of the petitioner clearly falls under the definition of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,-*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

31. Therefore, keeping in view my aforesaid discussion and also keeping in view the clear cut admission on the part of the owner of the respondent company namely Shri Subhash Chand,

who, *vide* his separate statement stated at the bar that he is ready and willing to reinstate the services of the petitioner but without back-wages. The admission on the part of the respondent is out of his free will and volition. Such admission was not extracted from the respondent by applying any kind of extraneous factors such as fraud, coercion, mis-representation or any type of pressure. An admission is always treated as the best evidence available on record. Hence, the petitioner is held entitled for reinstatement with seniority and continuity.

32. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termination, the petitioner was not gainfully employed. The petitioner has failed to discharge her burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculier facts and circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respondent company.

ISSUE NO.3

33. In support of this issue no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable before this Court especially when the same has been filed by the petitioner well within before the expiry of three years from the date of her termination. I find nothing wrong with this petition which is perfectably maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 4 & 5

34. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

35. In support of these issues no evidence has been led by the respondent, which could go to show that this Court has no jurisdiction and the petitioner has not approached the Court with clean hands. Therefore, both theses issues are decided against the respondent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity**.** However, the petitioner is **not entitled to any back-wages**. The application/petition is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of December, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number : 74 of 2019

Instituted on : 03-08-2019

Decided on : 01-12-2022

Babli Devi w/o Shri Khushi Ram, c/o Sheel Cottage, Ward No. 12, VPO Taksal, Tehsil Kasauli, District Solan, HP. Through Shri J. C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Solan . .*Petitioner* .

VERSUS

M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager/Occupier. . .*Respondent.*

Statement of claim under the Industrial Disputes Act

For the Petitioner : Shri J. C. Bhardwaj, AR

For the Respondent : Shri Rahul Mahajan, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as The Act**) preferred on behalf of Ms. Babli Devi (**hereinafter to be referred as The Petitioner**) against the Factory Manager, M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, District Solan, H.P. (**hereinafter to be referred as The Respondent company**).

2. Material facts necessary for the disposal of the present petition, as alleged, by the petitioner in the statement of claim are thus that the petitioner was engaged as helper by the respondent company during the month of April 2014 and remained continued as such till her illegal removal from services on 07.12.2017. The petitioner was illegally restrained from attending her duties without any speaking orders and that too without any cogent reasons and justification. The petitioner despite various requests had not been allowed to enter the factory premises after 07.12.2017. It is further asserted that the services of the petitioner were terminated during the pendency of demand notice under section 2-K of the Act. The petitioner had worked for more than two years with neat and clean records and had completed 240 working days in every calendar year during the tenure of her services. The services of the petitioner have been terminated without any notice, retrenchment compensation and that too in violation of provisions of section 25-F of the Act. The junior workmen in the same establishment were retained by the respondent while the services of petitioner have been terminated, which is violative of sections 25-G and 25-H of the Act. It is also asserted that the action of the respondent to remove the petitioner from service is biased, unfair and unreasonable and followed the policy of hire and fire, which cannot be sustained on relevant law and facts in any event**.** The sudden removal of the petitioner from the employment has made his integrity doubtful in the eyes of one and all and as such the petitioner is un-employed since the date of her illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect** i.e. **from the date of her illegal removal/termination on 07.12.2017 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, the petitioner has concealed true and material facts and has not approached the Court with clean hands, eleven workers have resigned and taken full & final settlement and the petitioner was indulged in illegal and unjustified strike against the provisions of the Act and Model Standing Orders..

5. On merits, it is denied that the services of the petitioner have been terminated on 7.12.2017. It is submitted that the petitioner along-with other co-workers in a concerted manner engineered and did an illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is denied that the services of the petitioner were terminated during the pendency of the demand notice. The petitioner had failed to resume her duties even after advised by the Labour-*cum*-Conciliation Officer, Solan. Since, the services of the petitioner were never terminated by the respondent, hence there is no question of conducting any domestic enquiry arises. It is further submitted that there is no violation of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 17.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent since 07.12.2017 is/was improper and unjustified as alleged? . .OPP.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .*OPR.*

5. Whether this Court has no jurisdiction to entertain the present case as alleged? . .*OPR.*

6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	Yes
Issue No. 2	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No. 3	No
Issue No. 4	No
Issue No. 5	No
Relief	Claim petition partly allowed as per operative part of award

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she reiterated almost all the averments as made in the claim petition. She also tendered into evidence letter dated 10.4.2019 (PW-1/B), demand notice dated 10.10.2017 Mark PA, letter dated 18.11.2017 Mark PB and demand notice dated 11.12.2017 Mark PC on record.

13. In cross-examination, she admitted that she was asked by the Labour Inspector to file the case before the Court *vide* letter dated 10.4.2019. She denied that she worked with the respondent from 17.9.2016. Volunteered that she worked with the respondent since March, 2011. She denied that she carried out strike in the premises of the respondent company since 14.10.2017 and they staged "Dharna" in the office of Labour Officer, Parwanoo. She further denied that she was asked by the Labour Inspector to join back her duties. She denied to have left the job at her own. She also denied that the respondent company was paying minimum wages to her. She denied that they raised slogans outside the gate of the company and did not allow the management and working staff to enter the premises. She denied that the company has not retained any junior person to her. She also denied that she is gainfully employed.

14. In order to rebut, the respondent has examined Shri Dev Raj, Security Guard of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has deposed that the workers/petitioner went on strike on 14.10.2017 and did not work and the workers failed to perform their duties inspite of respondent asking them to come and work. He further deposed that the respondent did not terminates the services of the worker/petitioner.

15. In cross-examination, he denied that he closed the factory gate on 14.10.2017 and did not allow the workers to enter inside the factory. He expressed his ignorance that the services of the workers of terminated or not terminated.

16. Shri Subhash Jindal, Partner of respondent company appeared into the witness dock as (RW-2), who tendered in evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the news item Mark RX.

17. In cross-examination, he denied that the services of the petitioner were terminated by the respondent company. He further denied that the petitioner raised the demand notice before the management. He also denied that the persons junior to the petitioner were engaged and retained in the service. He denied that no notice was served upon the petitioners to resume the duty. He admitted that no chargesheet and enquiries were conducted against the petitioner.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. He further contended that the workers of the respondent company have raised industrial dispute under section 2-K of the Act despite that the services of the petitioner were termianted without any reason. So far as concerning the plea of abandonment which has to be proved on record, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Rahul Mahajan, Ld. Counsel for the respondent urged that services of the petitioner were never terminated by the respondent company and despite having asked to resume her duties she failed to resume her duties. He further contended that the petitioner along-with other co-workers have indulged in grave misconduct by participating in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. Since, the petitioner failed to resume her duties, hence there was no necessity to conduct any enquiry against her as she herself has abandoned her job. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the case record, it is manifestly clear on record that the petitioner had worked as helper with the respondent company since April 2014 and she worked as such till 07.12.2017. The one grouse raised from the side of the respondent company is that the petitioner along-with other co-workers has indulged in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is further the case of the respondent that the services of the petitioner were never termainted by the respodnent company but in fact she herself had abandoned the job. On the other hand it is the case of the petitioner that the respondent company closed the gate of the factory and did not allow her to resume her duties. It is an admitted case of both the parties that neither any notice nor any domestic enquiry has been conducted against the petitioner before her alleged termination/abandonment.

23. There is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume her duties. From the record, it is also quite clear that before terminating the services of the petitioner neither she had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned her job but there is no such material which could go to show that any

notice had been issued to her for resuming her duties. *It has been held by the **Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub** that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."* *It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman. The Hon'ble Apex Court has held as under:*

> "**The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."**

24. Thus, Having regard to the law laid down by the Hon'ble Apex Court *(supra)* as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

25. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

26. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

27. From the perusal of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but she was not allowed to join her duties. Hence, the case of the petitioner clearly falls under the definition of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisions of section 25-F of the Act. Therefore, in view of the aforesaid

discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,-***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

31. Therefore, keeping in view my aforesaid discussion and also keeping in view the clear cut admission on the part of the owner of the respondent company namely Shri Subhash Chand, who, *vide* his separate statement stated at the bar that he is ready and willing to reinstate the services of the petitioner but without back-wages. The admission on the part of the respondent is out of his free will and volition. Such admission was not extracted from the respondent by applying any kind of extraneous factors such as fraud, coercion, mis-representation or any type of pressure. An admission is always treated as the best evidence available on record. Hence, the petitioner is held entitled for reinstatement with seniority and continuity.

32. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termination, the petitioner was not gainfully employed. The petitioner has failed to discharge her burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculier facts and circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respondent company.

ISSUE NO.3

33. In support of this issue no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable before this Court especially when the same has been filed by the petitioner well within before the expiry of three years from the date of her termination. I find nothing wrong with this petition which is perfectably maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 4 & 5

34. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

35. In support of these issues no evidence has been led by the respondent, which could go to show that this Court has no jurisdiction and the petitioner has not approached the Court with clean hands. Therefore, both theses issues are decided against the respodnent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity**.** However, the petitioner is **not entitled to any back-wages**. The application/petition is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of December, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number : 75 of 2019

Instituted on : 03-08-2019

Decided on : 01-12-2022

Baldev Singh s/o Shri Milkhi Ram, c/o Sheel Cottage, Ward No. 12, VPO Taksal, Tehsil Kasauli, District Solan, H.P. Through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Solan. . .*Petitioner.*

VERSUS

M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager/Occupier. . .*Respondent*.

Statement of claim under the Industrial Disputes Act

For the Petitioner : Shri J. C. Bhardwaj, AR

For the Respondent : Shri Rahul Mahajan, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as The Act**) preferred on behalf of Shri Baldev Singh (**hereinafter to be referred as The Petitioner**) against the Factory Manager, M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, District Solan, H.P. (**hereinafter to be referred as The Respondent company**).

2. Material facts necessary for the disposal of the present petition, as alleged, by the petitioner in the statement of claim are thus that the petitioner was engaged as an operator by the respondent company during the month of March 2011 and remained continued as such till his illegal removal from services on 07.12.2017. The petitioner was illegally restrained from attending his duties without any speaking orders and that too without any cogent reasons and justification. The petitioner despite various requests had not been allowed to enter the factory premises after 07.12.2017. It is further asserted that the services of the petitioner were terminated during the pendency of demand notice under section 2-K of the Act. The petitioner had worked for more than two years with neat and clean records and had completed 240 working days in every calendar year during the tenure of his services. The services of the petitioner have been terminated without any

notice, retrenchment compensation and that too in violation of provisions of section 25-F of the Act. The junior workmen in the same establishment were retained by the respondent while the services of petitioner have been terminated, which is violative of sections 25-G and 25-H of the Act. It is also asserted that the action of the respondent to remove the petitioner from service is biased, unfair and unreasonable and followed the policy of hire and fire, which cannot be sustained on relevant law and facts in any event**.** The sudden removal of the petitioner from the employment has made his integrity doubtful in the eyes of one and all and as such the petitioner is un-employed since the date of his illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect** i.e. **from the date of her illegal removal/termination on 07.12.2017 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, the petitioner has concealed true and material facts and has not approached the Court with clean hands, eleven workers have resigned and taken full & final settlement and the petitioner was indulged in illegal and unjustified strike against the provisions of the Act and Model Standing Orders..

5. On merits, it is denied that the services of the petitioner have been terminated on 7.12.2017. It is submitted that the petitioner along-with other co-workers in a concerted manner engineered and did an illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is denied that the services of the petitioner were terminated during the pendency of the demand notice. The petitioner had failed to resume his duties even after advised by the Labour-*cum*-Conciliation Officer, Solan. Since, the services of the petitioner were never terminated by the respondent, hence there is no question of conducting any domestic enquiry arises. It is further submitted that there is no violation of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 17.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent since 07.12.2017 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .*OPR.*

5. Whether this Court has no jurisdiction to entertain the present case as alleged? . .*OPR.*

6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No.3	No
Issue No.4	No
Issue No.5	No
Relief.	Claim petition partly allowed as per operative part of award

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. She also tendered into evidence letter dated 10.4.2019 (PW-1/B), demand notice dated 10.10.2017 Mark PA, letter dated 18.11.2017 Mark PB and demand notice dated 11.12.2017 Mark PC on record.

13. In cross-examination, he admitted that he was asked by the Labour Inspector to file the case before the Court *vide* letter dated 10.4.2019. He denied that he worked with the respondent from June 2013. He denied that he carried out strike in the premises of the respondent company since 14.10.2017 and they staged "Dharna" in the office of Labour Officer, Parwanoo. He further denied that he was asked by the Labour Inspector to join back his duties. He denied to have left the job at his own. He also denied that the respondent company was paying minimum wages to him. He denied that they raised slogans outside the gate of the company and did not allow the management and working staff to enter the premises. He denied that the company has not retained any junior person to him. He also denied that he is gainfully employed.

14. In order to rebut, the respondent has examined Shri Dev Raj, Security Guard of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has deposed that the workers/petitioner went on strike on 14.10.2017 and did not work and the workers failed to perform their duties inspite of respondent asking them to come and work. He further deposed that the respondent did not terminates the services of the worker/petitioner.

15. In cross-examination, he denied that he closed the factory gate on 14.10.2017 and did not allow the workers to enter inside the factory. He expressed his ignorance that the services of the workers of terminated or not terminated.

16. Shri Subhash Jindal, Partner of respondent company appeared into the witness dock as (RW-2), who tendered in evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the news item Mark RX.

17. In cross-examination, he denied that the services of the petitioner were terminated by the respondent company. He further denied that the petitioner raised the demand notice before the management. He also denied that the persons junior to the petitioner were engaged and retained in the service. He denied that no notice was served upon the petitioners to resume the duty. He admitted that no chargesheet and enquiries were conducted against the petitioner.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. He further contended that the workers of the respodnent company have raised industrial dispute under section 2-K of the Act despite that the services of the petitioner were terminated without any reason. So far as concerning the plea of abandonment which has to be proved on record, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Rahul Mahajan, Ld. Counsel for the respondent urged that services of the petitioner were never terminated by the respondent company and despite having asked to resume his duties he failed to resume his duties. He further contended that the petitioner along-with other co-workers have indulged in grave misconduct by participating in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. Since, the petitioner failed to resume his duties, hence there was no necessity to conduct any enquiry against him as he himself has abandoned his job. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the case record, it is manifestly clear on record that the petitioner had worked as an operator with the respondent company since March 2011 and he worked as such till 07.12.2017. The one grouse raised from the side of the respondent company is that the petitioner along-with other co-workers has indulged in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the

factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is further the case of the respondent that the services of the petitioner were never terminated by the respondent company but in fact she herself had abandoned the job. On the other hand it is the case of the petitioner that the respondent company closed the gate of the factory and did not allow him to resume his duties. It is an admitted case of both the parties that neither any notice nor any domestic enquiry has been conducted against the petitioner before his alleged termination/abandonment.

23. There is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned her job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub*** *that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."* *It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman. The Hon'ble Apex Court has held as under:*

> "**The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."**

24. Thus, Having regard to the law laid down by the Hon'ble Apex Court (*supra*) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that he had not abandoned the job at his own.

25. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

26. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

27. From the perusal of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the definition of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case….”

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month’s mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

31. Therefore, keeping in view my aforesaid discussion and also keeping in view the clear cut admission on the part of the owner of the respondent company namely Shri Subhash Chand, who, *vide* his separate statement stated at the bar that he is ready and willing to reinstate the services of the petitioner but without back-wages. The admission on the part of the respondent is out of his free will and volition. Such admission was not extracted from the respondent by applying any kind of extraneous factors such as fraud, coercion, mis-representation or any type of pressure. An admission is always treated as the best evidence available on record. Hence, the petitioner is held entitled for reinstatement with seniority and continuity.

32. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termination, the petitioner was not gainfully employed. The petitioner has failed to discharge his burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculier facts and circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respondent company.

ISSUE NO. 3

33. In support of this issue no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable before this Court especially when the same has been filed by the petitioner well within before the expiry of three years from the date of his termiantion. I find nothing wrong with this petition which is perfectably maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 4 & 5

34. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

35. In support of these issues no evidence has been led by the respondent, which could go to show that this Court has no jurisdiction and the petitioner has not approached the Court with clean hands. Therefore, both theses issues are decided against the respondent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity**.** However, the petitioner is **not entitled to any back-wages**. The application/petition is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of December, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number : 137 of 2019

Instituted on : 01-10-2019

Decided on : 01-12-2022

Pyare Lal s/o Shri Ayeshar Shah, c/o Sheel Cottage, Ward No. 12 VPO Taksal, Tehsil Kasauli, District Solan, H.P. through Shri J. C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Solan. . .*Petitioner.*

VERSUS

M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager/Occupier . .*Respondent*.

Statement of claim under the Industrial Disputes Act

For the Petitioner : Shri J. C. Bhardwaj, AR

For the Respondent : Shri Rahul Mahajan, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as The Act**) preferred on behalf of Shri Pyare Lal (**hereinafter to be referred as The Petitioner**) against the Factory Manager, M/s Mahadev Pharmaceutical,

Kasauli Road Parwanoo, District Solan, H.P. (**hereinafter to be referred as The Respondent company**).

2. Material facts necessary for the disposal of the present petition, as alleged, by the petitioner in the statement of claim are thus that the petitioner was engaged as helper by the respondent company during the month of December 2014 and remained continued as such till his illegal removal from services on 07.12.2017. The petitioner was illegally restrained from attending his duties without any speaking orders and that too without any cogent reasons and justification. The petitioner despite various requests had not been allowed to enter the factory premises after 07.12.2017. It is further asserted that the services of the petitioner were terminated during the pendency of demand notice under section 2-K of the Act. The petitioner had worked for more than two years with neat and clean records and had completed 240 working days in every calendar year during the tenure of his services. The services of the petitioner have been terminated without any notice, retrenchment compensation and that too in violation of provisions of section 25-F of the Act. The junior workmen in the same establishment were retained by the respondent while the services of petitioner have been terminated, which is violative of sections 25-G and 25-H of the Act. It is also asserted that the action of the respondent to remove the petitioner from service is biased, unfair and unreasonable and followed the policy of hire and fire, which cannot be sustained on relevant law and facts in any event**.** The sudden removal of the petitioner from the employment has made his integrity doubtful in the eyes of one and all and as such the petitioner is un-employed since the date of his illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect** i.e. **from the date of her illegal removal/termination on 07.12.2017 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, the petitioner has concealed true and material facts and has not approached the Court with clean hands, eleven workers have resigned and taken full & final settlement and the petitioner was indulged in illegal and unjustified strike against the provisions of the Act and Model Standing Orders..

5. On merits, it is denied that the services of the petitioner have been terminated on 7.12.2017. It is submitted that the petitioner along-with other co-workers in a concerted manner engineered and did an illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is denied that the services of the petitioner were terminated during the pendency of the demand notice. The petitioner had failed to resume his duties even after advised by the Labour-*cum*-Conciliation Officer, Solan. Since, the services of the petitioner were never terminated by the respondent, hence there is no question of conducting any domestic enquiry arises. It is further submitted that there is no violation of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 17.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent since 07.12.2017 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .*OPR.*

5. Whether this Court has no jurisdiction to entertain the present case as alleged? . .*OPR.*

6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	Yes
Issue No. 2	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No. 3	No
Issue No. 4	No
Issue No. 5	No
Relief	Claim petition partly allowed as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. She also tendered into evidence letter dated

10.4.2019 (PW-1/B), demand notice dated 10.10.2017 Mark PA, letter dated 18.11.2017 Mark PB and demand notice dated 11.12.2017 Mark PC on record.

13. In cross-examination, he admitted that he was asked by the Labour Inspector to file the case before the Court *vide* letter dated 10.4.2019. He denied that he worked with the respondent from November 2016. He denied that he carried out strike in the premises of the respondent company since 14.10.2017 and they staged "Dharna" in the office of Labour Officer, Parwanoo. He further denied that he was asked by the Labour Inspector to join back his duties. He denied to have left the job at his own. He also denied that the respondent company was paying minimum wages to him. He denied that they raised slogans outside the gate of the company and did not allow the management and working staff to enter the premises. He denied that the company has not retained any junior person to him. He also denied that he is gainfully employed.

14. In order to rebut, the respondent has examined Shri Dev Raj, Security Guard of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has deposed that the workers/petitioner went on strike on 14.10.2017 and did not work and the workers failed to perform their duties inspite of respondent asking them to come and work. He further deposed that the respondent did not terminates the services of the worker/petitioner.

15. In cross-examination, he denied that he closed the factory gate on 14.10.2017 and did not allow the workers to enter inside the factory. He expressed his ignorance that the services of the workers of terminated or not terminated.

16. Shri Subhash Jindal, Partner of respondent company appeared into the witness dock as (RW-2), who tendered in evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the news item Mark RX.

17. In cross-examination, he denied that the services of the petitioner were terminated by the respondent company. He further denied that the petitioner raised the demand notice before the management. He also denied that the persons junior to the petitioner were engaged and retained in the service. He denied that no notice was served upon the petitioners to resume the duty. He admitted that no chargesheet and enquiries were conducted against the petitioner.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. He further contended that the workers of the respondent company have raised industrial dispute under section 2-K of the Act despite that the services of the petitioner were terminated without any reason. So far as concerning the plea of abandonment which has to be proved on record, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Rahul Mahajan, Ld. Counsel for the respondent urged that services of the petitioner were never terminated by the respondent company and despite having asked to resume his duties he failed to resume his duties. He further contended that the petitioner along-with other co-workers have indulged in grave misconduct by participating in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform

their duties. Since, the petitioner failed to resume his duties, hence there was no necessity to conduct any enquiry against him as he himself has abandoned his job. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the case record, it is manifestly clear on record that the petitioner had worked as helper with the respondent company since December 2014 and he worked as such till 07.12.2017. The one grouse raised from the side of the respondent company is that the petitioner along-with other co-workers has indulged in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is further the case of the respodnent that the services of the petitioner were never terminated by the respondent company but in fact she herself had abandoned the job. On the other hand it is the case of the petitioner that the respondent company closed the gate of the factory and did not allow him to resume his duties. It is an admitted case of both the parties that neither any notice nor any domestic enquiry has been conducted against the petitioner before his alleged termination/abandonment.

23. There is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume his duties. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned her job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub*** *that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."* *It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman. The Hon'ble Apex Court has held as under:*

> "**The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A.**

It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

24. Thus, Having regard to the law laid down by the Hon'ble Apex Court (*supra*) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that he had not abandoned the job at his own.

25. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

26. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

27. From the perusal of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but he was not allowed to join his duties. Hence, the case of the petitioner clearly falls under the definition of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,-***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

31. Therefore, keeping in view my aforesaid discussion and also keeping in view the clear cut admission on the part of the owner of the respondent company namely Shri Subhash Chand, who, *vide* his separate statement stated at the bar that he is ready and willing to reinstate the services of the petitioner but without back-wages. The admission on the part of the respondent is out of his free will and volition. Such admission was not extracted from the respondent by applying any kind of extraneous factors such as fraud, coercion, mis-representation or any type of pressure. An admission is always treated as the best evidence available on record. Hence, the petitioner is held entitled for reinstatement with seniority and continuity.

32. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termination, the petitioner was not gainfully employed. The petitioner has failed to discharge his burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculier facts and circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respondent company.

ISSUE NO.3

33. In support of this issue no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable before this Court especially when the same has been filed by the petitioner well within before the expiry of three years from the date of his termination. I find nothing wrong with this petition which is perfectably maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 4 & 5

34. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

35. In support of these issues no evidence has been led by the respondent, which could go to show that this Court has no jurisdiction and the petitioner has not approached the Court with clean hands. Therefore, both theses issues are decided against the respondent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity**.** However, the petitioner is **not entitled to any back-wages**. The application/petition is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of December, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number : 138 of 2019

Instituted on : 01-10-2019

Decided on : 01-12-2022

Krishna Devi w/o Shri Devender Kumar, c/o Sheel Cottage, Ward No. 12, VPO Taksal, Tehsil Kasauli, District Solan, H.P. Through Shri J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Solan . .*Petitioner.*

VERSUS

M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, HP.. through its Factory Manager/Occupier . .*Respondent*.

Statement of claim under the Industrial Disputes Act

For the Petitioner : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Rahul Mahajan, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as The Act**) preferred on behalf of Ms. Krishna Devi (**hereinafter to be referred as The Petitioner**) against the Factory Manager, M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, District Solan, H.P. (**hereinafter to be referred as The Respondent company**).

2. Material facts necessary for the disposal of the present petition, as alleged, by the petitioner in the statement of claim are thus that the petitioner was engaged as helper by the respondent company during the month of June 2014 and remained continued as such till her illegal removal from services on 07.12.2017. The petitioner was illegally restrained from attending her duties without any speaking orders and that too without any cogent reasons and justification. The petitioner despite various requests had not been allowed to enter the factory premises after 07.12.2017. It is further asserted that the services of the petitioner were terminated during the pendency of demand notice under section 2-K of the Act. The petitioner had worked for more than two years with neat and clean records and had completed 240 working days in every calendar year during the tenure of her services. The services of the petitioner have been terminated without any notice, retrenchment compensation and that too in violation of provisions of section 25-F of the Act. The junior workmen in the same establishment were retained by the respondent while the services of petitioner have been terminated, which is violative of sections 25-G and 25-H of the Act. It is also asserted that the action of the respondent to remove the petitioner from service is biased, unfair and unreasonable and followed the policy of hire and fire, which cannot be sustained on relevant law and facts in any event**.** The sudden removal of the petitioner from the employment has made his integrity doubtful in the eyes of one and all and as such the petitioner is un-employed since the date of her illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect** i.e. **from the date of her illegal removal/termination on 07.12.2017 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, the petitioner has concealed true and material facts and has not approached the Court with clean hands, eleven workers have resigned and taken full & final

settlement and the petitioner was indulged in illegal and unjustified strike against the provisions of the Act and Model Standing Orders..

5. On merits, it is denied that the services of the petitioner have been terminated on 7.12.2017. It is submitted that the petitioner along-with other co-workers in a concerted manner engineered and did an illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is denied that the services of the petitioner were terminated during the pendency of the demand notice. The petitioner had failed to resume her duties even after advised by the Labour-*cum*-Conciliation Officer, Solan. Since, the services of the petitioner were never terminated by the respondent, hence there is no question of conducting any domestic enquiry arises. It is further submitted that there is no violation of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 17.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent since 07.12.2017 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . . *OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .*OPR.*

5. Whether this Court has no jurisdiction to entertain the present case as alleged? . .*OPR*.

6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No.3	No

Issue No.4 No

Issue No.5 No

Relief Claim petition partly allowed as per operative part of award

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she reiterated almost all the averments as made in the claim petition. She also tendered into evidence letter dated 10.4.2019 (PW-1/B), demand notice dated 10.10.2017 Mark PA, letter dated 18.11.2017 Mark PB and demand notice dated 11.12.2017 Mark PC on record.

13. In cross-examination, she admitted that she was asked by the Labour Inspector to file the case before the Court *vide* letter dated 10.4.2019. She denied that she worked with the respondent from August 2017. She denied that she carried out strike in the premises of the respondent company since 14.10.2017 and they staged "Dharna" in the office of Labour Officer, Parwanoo. She further denied that she was asked by the Labour Inspector to join back her duties. She denied to have left the job at her own. She also denied that the respondent company was paying minimum wages to her. She denied that they raised slogans outside the gate of the company and did not allow the management and working staff to enter the premises. She denied that the company has not retained any junior person to her. She also denied that she is gainfully employed.

14. In order to rebut, the respondent has examined Shri Dev Raj, Security Guard of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has deposed that the workers/petitioner went on strike on 14.10.2017 and did not work and the workers failed to perform their duties inspite of respondent asking them to come and work. He further deposed that the respondent did not terminates the services of the worker/petitioner.

15. In cross-examination, he denied that he closed the factory gate on 14.10.2017 and did not allow the workers to enter inside the factory. He expressed his ignorance that the services of the workers of terminated or not terminated.

16. Shri Subhash Jindal, Partner of respondent company appeared into the witness dock as (RW-2), who tendered in evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the news item Mark RX.

17. In cross-examination, he denied that the services of the petitioner were terminated by the respondent company. He further denied that the petitioner raised the demand notice before the management. He also denied that the persons junior to the petitioner were engaged and retained in the service. He denied that no notice was served upon the petitioners to resume the duty. He admitted that no chargesheet and enquiries were conducted against the petitioner.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. He further contended that the workers of the respondent company have raised industrial dispute under section 2-K of the Act despite that the services of the petitioner were terminated without any reason. So far as concerning the plea of abandonment which has to be proved on record, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Rahul Mahajan, Ld. Counsel for the respondent urged that services of the petitioner were never terminated by the respondent company and despite having asked to resume her duties she failed to resume her duties. He further contended that the petitioner along-with other co-workers have indulged in grave misconduct by participating in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. Since, the petitioner failed to resume her duties, hence there was no necessity to conduct any enquiry against her as she herself has abandoned her job. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the case record, it is manifestly clear on record that the petitioner had worked as helper with the respondent company since June 2014 and she worked as such till 07.12.2017. The one grouse raised from the side of the respondent company is that the petitioner along-with other co-workers has indulged in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is further the case of the respondent that the services of the petitioner were never terminated by the respondent company but in fact she herself had abandoned the job. On the other hand it is the case of the petitioner that the respondent company closed the gate of the factory and did not allow her to resume her duties. It is an admitted case of both the parties that neither any notice nor any domestic enquiry has been conducted against the petitioner before her alleged termination/abandonment.

23. There is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume her duties. From the record, it is also quite clear that before terminating the services of the petitioner neither she had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned her job but there is no such material which could go to show that any notice had been issued to her for resuming her duties. *It has been held by the* ***Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub*** *that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls.*" *It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman. The Hon'ble Apex Court has held as under:*

> "**The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that**

the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

24. Thus, Having regard to the law laid down by the Hon'ble Apex Court *(supra*) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

25. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

26. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

27. From the perusal of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but she was not allowed to join her duties. Hence, the case of the petitioner clearly falls under the definition of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter;-*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

31. Therefore, keeping in view my aforesaid discussion and also keeping in view the clear cut admission on the part of the owner of the respondent company namely Shri Subhash Chand, who, *vide* his separate statement stated at the bar that he is ready and willing to reinstate the services of the petitioner but without back-wages. The admission on the part of the respondent is out of his free will and volition. Such admission was not extracted from the respondent by applying

any kind of extraneous factors such as fraud, coercion, mis-representation or any type of pressure. An admission is always treated as the best evidence available on record. Hence, the petitioner is held entitled for reinstatement with seniority and continuity.

32. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termination, the petitioner was not gainfully employed. The petitioner has failed to discharge her burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculier facts and circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respondent company.

ISSUE NO.3

33. In support of this issue no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable before this Court especially when the same has been filed by the petitioner well within before the expiry of three years from the date of her termination. I find nothing wrong with this petition which is perfectably maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 4 & 5

34. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

35. In support of these issues no evidence has been led by the respondent, which could go to show that this Court has no jurisdiction and the petitioner has not approached the Court with clean hands. Therefore, both theses issues are decided against the respondent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity**.** However, the petitioner is **not entitled to any back-wages**. The application/petition is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of December, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number : 139 of 2019

Instituted on : 01-10-2019

Decided on : 01-12-2022

Niyamvati w/o Shri Charan Singh, c/o Sheel Cottage, Ward No. 12 VPO Taksal, Tehsil Kasauli, District Solan, H.P. Through Shri J.C Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts Solan . .*Petitioner* .

VERSUS

M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager/Occupier . .*Respondent.*

Statement of claim under the Industrial Disputes Act

For the Petitioner : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Rahul Mahajan, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as The Act**) preferred on behalf of Ms. Niyamvati (**hereinafter to be referred as The Petitioner**) against the Factory Manager, M/s Mahadev Pharmaceutical, Kasauli Road Parwanoo, District Solan, H.P. (**hereinafter to be referred as The Respondent company**).

2. Material facts necessary for the disposal of the present petition, as alleged, by the petitioner in the statement of claim are thus that the petitioner was engaged as helper by the respondent company during the month of July 2016 and remained continued as such till her illegal removal from services on 07.12.2017. The petitioner was illegally restrained from attending her duties without any speaking orders and that too without any cogent reasons and justification. The petitioner despite various requests had not been allowed to enter the factory premises after 07.12.2017. It is further asserted that the services of the petitioner were terminated during the pendency of demand notice under section 2-K of the Act. The petitioner had worked for more than two years with neat and clean records and had completed 240 working days in every calendar year during the tenure of her services. The services of the petitioner have been terminated without any notice, retrenchment compensation and that too in violation of provisions of section 25-F of the Act. The junior workmen in the same establishment were retained by the respondent while the services of petitioner have been terminated, which is violative of sections 25-G and 25-H of the Act. It is also asserted that the action of the respondent to remove the petitioner from service is biased, unfair and unreasonable and followed the policy of hire and fire, which cannot be sustained on relevant law and facts in any event**.** The sudden removal of the petitioner from the employment has made his integrity doubtful in the eyes of one and all and as such the petitioner is un-employed since the date of her illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment with retrospective effect** i.e. **from the date of her illegal removal/termination on 07.12.2017 with full back-wages, seniority and other consequential service benefits throughout and with costs."**

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, the petitioner has concealed true and material facts and has not approached the Court with clean hands, eleven workers have resigned and taken full & final settlement and the petitioner was indulged in illegal and unjustified strike against the provisions of the Act and Model Standing Orders..

5. On merits, it is denied that the services of the petitioner have been terminated on 7.12.2017. It is submitted that the petitioner along-with other co-workers in a concerted manner engineered and did an illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is denied that the services of the petitioner were terminated during the pendency of the demand notice. The petitioner had failed to resume her duties even after advised by the Labour-*cum*-Conciliation Officer, Solan. Since, the services of the petitioner were never terminated by the respondent, hence there is no question of conducting any domestic enquiry arises. It is further submitted that there is no violation of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 17.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent since 07.12.2017 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .*OPR.*

5. Whether this Court has no jurisdiction to entertain the present case as alleged? . .*OPR.*

6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No.3	No
Issue No.4	No
Issue No.5	No
Relief.	Claim petition partly allowed as per operative part of award

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she reiterated almost all the averments as made in the claim petition. She also tendered into evidence letter dated 10.4.2019 (PW-1/B), demand notice dated 10.10.2017 Mark PA, letter dated 18.11.2017 Mark PB and demand notice dated 11.12.2017 Mark PC on record.

13. In cross-examination, she admitted that she was asked by the Labour Inspector to file the case before the Court *vide* letter dated 10.4.2019. She denied that she worked with the respondent from 09.09.2017. Volunteered that she worked with the respondent since March, 2011. She denied that she carried out strike in the premises of the respondent company since 14.10.2017 and they staged "Dharna" in the office of Labour Officer, Parwanoo. She further denied that she was asked by the Labour Inspector to join back her duties. She denied to have left the job at her own. She also denied that the respondent company was paying minimum wages to her. She denied that they raised slogans outside the gate of the company and did not allow the management and working staff to enter the premises. She denied that the company has not retained any junior person to her. She also denied that she is gainfully employed.

14. In order to rebut, the respondent has examined Shri Dev Raj, Security Guard of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has deposed that the workers/petitioner went on strike on 14.10.2017 and did not work and the workers failed to perform their duties inspite of respondent asking them to come and work. He further deposed that the respondent did not terminates the services of the worker/petitioner.

15. In cross-examination, he denied that he closed the factory gate on 14.10.2017 and did not allow the workers to enter inside the factory. He expressed his ignorance that the services of the workers of terminated or not terminated.

16. Shri Subhash Jindal, Partner of respondent company appeared into the witness dock as (RW-2), who tendered in evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the news item Mark RX.

17. In cross-examination, he denied that the services of the petitioner were terminated by the respondent company. He further denied that the petitioner raised the demand notice before the management. He also denied that the persons junior to the petitioner were engaged and retained in the service. He denied that no notice was served upon the petitioners to resume the duty. He admitted that no chargesheet and enquiries were conducted against the petitioner.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. He further contended that the workers of the respondent company have raised industrial dispute under section 2-K of the Act despite that the services of the petitioner were terminated without any reason. So far as concerning the plea of abandonment which has to be proved on record, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Rahul Mahajan, Ld. Counsel for the respondent urged that services of the petitioner were never terminated by the respondent company and despite having asked to resume her duties she failed to resume her duties. He further contended that the petitioner along-with other co-workers have indulged in grave misconduct by participating in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. Since, the petitioner failed to resume her duties, hence there was no necessity to conduct any enquiry against her as she herself has abandoned her job. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the case record, it is manifestly clear on record that the petitioner had worked as helper with the respondent company since July 2016 and she worked as such till 07.12.2017. The one grouse raised from the side of the respondent company is that the petitioner along-with other co-workers has indulged in illegal and unjustified strike *w.e.f.* 14.10.2017 and even restricted/blocked the officials and owner of the respondent to enter the factory. The petitioner with other co-workers also used un-parliamentary language against the officials and owner of the respondent company and also stopped the willing workers to perform their duties. It is further the case of the respondent that the services of the petitioner were never terminated by the respondent company but in fact she herself had abandoned the job. On the other hand it is the case of the petitioner that the respondent company closed the gate of the factory and did not allow her to resume her duties. It is an admitted case of both the parties that neither any notice nor any domestic enquiry has been conducted against the petitioner before her alleged termintion/abandonment.

23. There is nothing on record, which could go to show that after the alleged abandonment, the respondent had called the petitioner to resume her duties. From the record, it is also quite clear that before terminating the services of the petitioner neither she had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned her job but there is no such material which could go to show that any

notice had been issued to her for resuming her duties. *It has been held by the **Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub** that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls."* *It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman. The Hon'ble Apex Court has held as under:*

> "**The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."**

24. Thus, Having regard to the law laid down by the Hon'ble Apex Court (*supra*) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that she had not abandoned the job at her own.

25. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent or not?

26. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

27. From the perusal of entire case record as well as my aforesaid discussion, it is clear that the petitioner had not abandoned his job but she was not allowed to join her duties. Hence, the case of the petitioner clearly falls under the definition of retrenchment. It is also admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent, while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner no notice as prescribed under section 25-F of the Act had been issued. The compensation is also to be calculated and asserted as per the provisions of section 25-F of the Act. Therefore, in view of the aforesaid

discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,-*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

31. Therefore, keeping in view my aforesaid discussion and also keeping in view the clear cut admission on the part of the owner of the respondent company namely Shri Subhash Chand, who, *vide* his separate statement stated at the bar that he is ready and willing to reinstate the services of the petitioner but without back-wages. The admission on the part of the respondent is out of his free will and volition. Such admission was not extracted from the respondent by applying any kind of extraneous factors such as fraud, coercion, mis-representation or any type of pressure. An admission is always treated as the best evidence available on record. Hence, the petitioner is held entitled for reinstatement with seniority and continuity.

32. Now, the question arises as to as whether the petitioner is entitled for any back-wages or not? There is nothing on record which could go to show that after the termination, the petitioner was not gainfully employed. The petitioner has failed to discharge her burden by leading cogent and satisfactory evidence in this regard. Moreover, keeping in view the peculier facts and circumstances of the case, I am of the considered opinion that the petitioner is not entitled to any back-wages. Accordingly, both these issues are partly decided in favour of the petitioner and against the respondent company.

ISSUE NO.3

33. In support of this issue no evidence has been led by the respdonent which could go to show as to how the present petition is not maintainable before this Court especially when the same has been filed by the petitioner well within before the expiry of three years from the date of her termiantion. I find nothing wrong with this petition which is perfectably maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 4 & 5

34. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

35. In support of these issues no evidence has been led by the respondent, which could go to show that this Court has no jurisdiction and the petitioner has not approached the Court with clean hands. Therefore, both theses issues are decided against the respondent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity**.** However, the petitioner is **not entitled to any back-wages**. The application/petition is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of December, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

ब अदालत श्री जय चन्द, सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी, धर्मशाला, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : /NT/23

Jigme Thinlay s/o Sh. Lobsang Tenzin, r/o O/o HH The Dalai Lama, Mcleodganj & Tehsil Dharamshala, District Kangra (H.P.).

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 37(2) हिमाचल प्रदेश जन्म/मृत्यु पंजीकृत करने बारे।

Jigme Thinlay s/o Sh. Lobsang Tenzin, r/o O/o HH The Dalai Lama, Mcleodganj & Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में शपथ पत्र सहित मुकद्दमा दायर किया है कि मेरा जन्म दिनांक 01–05–1975 को हुआ है परन्तु एम0 सी0 धर्मशाला/ग्राम पंचायत में जन्म/मृत्यु पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को Jigme Thinlay s/o Sh. Lobsang Tenzin के जन्म दिनांक 01–05–1975 को पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 25–05–2023 को असालतन या वकालतन हाजिर होकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र जन्म 01–05–1975 पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 06–04–2023 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/–
सहायक समाहर्ता द्वितीय श्रेणी
एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी, धर्मशाला, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : /NT/23

Rajiv Kumar s/o Sh. Kishori Lal Sharma, r/o 148, Opp. Khalsa College, Satguru Ram Singh Colony, Amritsar, Punjab.

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Rajiv Kumar s/o Sh. Kishori Lal Sharma, r/o 148, Opp Khalsa College, Satguru Ram Singh Colony, Amritsar, Punjab ने इस अदालत में शपथ पत्र सहित मुकद्दमा दायर किया है कि मेरे चाचा की मृत्यु दिनांक 20–11–2022 को हुई है परन्तु एम0 सी0 धर्मशाला / ग्राम पंचायत में जन्म / मृत्यु पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को Madan Lal के जन्म / मृत्यु पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 25–05–2023 को असालतन या वकालतन हाजिर होकर पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र मृत्यु तिथि 20–11–2022 पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 21–04–2023 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी
एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

————————

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी, धर्मशाला, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : / NT / 23

Raju Raikal w/o Lekh Raikal, r/o Kotwali Bazar, P.O. & Tehsil Dharamshala, Distt. Kangra (H.P.).

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Raju Raikal w/o Lekh Raikal, r/o Kotwali Bazar, P.O. & Tehsil Dharamshala, Distt. Kangra (H.P.) ने इस अदालत में शपथ पत्र सहित मुकद्दमा दायर किया है कि मेरे पुत्र का जन्म दिनांक 14–01–2016 को हुआ है परन्तु एम0 सी0 धर्मशाला / ग्राम पंचायत में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को Sameer के जन्म को पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 25–05–2023 को असालतन या वकालतन हाजिर होकर पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र जन्म तिथि 14–01–2016 को पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 21–04–2023 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी
एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी, धर्मशाला, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : /NT/23

Mohan Ram s/o Sh. Papu Ram, r/o Charan Khad, P.O. & Tehsil Dharamshala, Distt. Kangra (H.P.).

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Mohan Ram s/o Sh. Papu Ram, r/o Charan Khad, P.O. & Tehsil Dharamshala, Distt. Kangra (H.P.) ने इस अदालत में शपथ पत्र सहित मुकद्दमा दायर किया है कि मेरे पुत्र का जन्म दिनांक 12–01–2016 को हुआ है परन्तु एम0 सी0 धर्मशाला/ग्राम पंचायत में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को Vansh Kumar के जन्म को पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 25–05–2023 को असालतन या वकालतन हाजिर होकर पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र जन्म तिथि 12–01–2016 को पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 21–04–2023 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/–
सहायक समाहर्ता द्वितीय श्रेणी
एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

––––––––––

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी, धर्मशाला, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0: /NT/23

Raju Raikal w/o Lekh Raikal, r/o Kotwali Bazar, P.O. & Tehsil Dharamshala, Distt. Kangra (H.P.).

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Raju Raikal w/o Lekh Raikal, r/o Kotwali Bazar, P.O. & Tehsil Dharamshala, Distt. Kangra (H.P.) ने इस अदालत में शपथ पत्र सहित मुकद्दमा दायर किया है कि मेरी पुत्री का जन्म दिनांक 01–06–2011 को हुआ है परन्तु एम0 सी0 धर्मशाला/ग्राम पंचायत में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को Anu की जन्म तिथि 01–06–2011 को पंजीकृत किये जाने बारे कोई एतराज हो तो वह हमारी अदालत में दिनांक 25–05–2023 को असालतन या वकालतन हाजिर होकर अपना

एतराज पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र जन्म तिथि 01–06–2011 को पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 21–04–2023 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी
एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

————————

ब अदालत श्री जय चन्द, सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी, धर्मशाला, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : / NT / 23

Tenzin Namgyal s/o Sh. Lobsang Tenzin, r/o O/o HH The Dalai Lama, Mcleodganj & Tehsil Dharamshala, District Kangra (H.P.).

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश जन्म / मृत्यु पंजीकृत करने बारे।

Tenzin Namgyal s/o Sh. Lobsang Tenzin, r/o O/o HH The Dalai Lama, Mcleodganj & Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में शपथ पत्र सहित मुकद्दमा दायर किया है कि मेरा जन्म दिनांक 14–01–1980 को हुआ है परन्तु एम0 सी0 धर्मशाला / ग्राम पंचायत में जन्म / मृत्यु पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को Tenzin Namgyal s/o Sh. Lobsang Tenzin के जन्म दिनांक 14–01–1980 को पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 25–05–2023 को असालतन या वकालतन हाजिर होकर पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र जन्म 14–01–1980 को पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 06–04–2023 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी
एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

————————

ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 :

Leeladhar Singh s/o Sh. Chhedu Singh Sidar, r/o Ward No. 11, Ram Nagar, Tehsil Dharamshala, District Kangra (H.P.).

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Leeladhar Singh s/o Sh. Chhedu Singh Sidar, r/o Ward No. 11, Ram Nagar, Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में शपथ पत्र सहित मुकद्दमा दायर किया है कि उसकी Mother Smt. Dharmin Bai w/o Chhedu Singh की जन्म / मृत्यु तिथि दिनांक 18–03–2017 है। परन्तु एम0 सी0 धर्मशाला / ग्राम पंचायत / Cantonment Board में जन्म / मृत्यु पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Dharmin Bai के जन्म / मृत्यु पंजीकृत किये जाने बारे कोई उजर / एतराज हो तो वह अपना एतराज अधोहस्ताक्षरी की अदालत में दिनांक 23–05–2023 को असालतन या वकालतन हाजिर होकर पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र जन्म / मृत्यु पंजीकरण किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 20–04–2023 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी
एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

————————

ब अदालत श्री जय चन्द, सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी, धर्मशाला, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : / NT / 23

Ngawang Dechen w/o Dharma Rigsang, r/o Mcleodganj, P.O. Mcleodganj & Tehsil Dharamshala, District Kangra (H.P.).

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश जन्म / मृत्यु पंजीकृत करने बारे।

Ngawang Dechen w/o Dharma Rigsang, r/o Mcleodganj, P.O. Mcleodganj & Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में शपथ पत्र सहित मुकद्दमा दायर किया है कि मेरे पुत्र का जन्म दिनांक 29–10–2017 को हुआ है परन्तु एम0 सी0 धर्मशाला / ग्राम पंचायत में जन्म / मृत्यु पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को Tenzin Kunzub s/o Dharma Rigsang के जन्म दिनांक 29–10–2017 को पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 25–05–2023 को असालतन या वकालतन हाजिर होकर पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र जन्म 29–10–2017 को पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 06–04–2023 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी
एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।